

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 460 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO  
No
  2. To be referred to the Reporter or not? No :
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO  
No
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO  
No
  5. Whether it is to be circulated to the Civil Judge? No :

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GUJARAT AGRICULTURAL UNIVERSITY

Versus

M/S. CONCRETE CONSTRUCTION  
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Appearance:

MR JR NANAVATI for Petitioner  
MR MAULIK BHATT for Respondent No. 1  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 06/04/2000

ORAL JUDGEMENT

1. This is defendantg's Appeal against the Judgment and Decree dated 31.7.1979 of lower court directing the defendant - appellant to refund a sum of Rs.3,852/-, out of the total security deposit of Rs.7704/- to the

plaintiff with 6 % interest from the date of the Suit till payment.

2. List has been revised twice but none appeared for the respondent. Shri J.R.Nanavati for the appellant has been heard and the Judgment under Appeal has been examined.

3. The dispute centers in a very narrow compass. Findings of the Court below on issue Nos.3 & 5 cannot be sustained either on law or on fact. The Court below has categorically observed that it is the plaintiff's firm which has committed breach of contract and not the defendant University. It further observed and found that "the plaintiff's firm has failed and neglected to carry out the construction work according to the terms and conditions of the contract. Plaintiff firm left the work half way and has abandoned the same without any justifiable ground to do so. The excuse put-forth by the plaintiff firm for not carrying out the Suit construction work are most unjustifiable and if I may say so, false." Still in face of these observations the trial Court decreed the Suit and directed the defendant to refund half of the security deposit. The total security deposit was Rs.7704/-. In para : 12 of the Judgment the Trial Court further observed that the plaintiff firm would naturally not be entitled to get any amount as refund from the said security deposit in the normal course. Yet the trial Court did not indicate what were the abnormal facts in the case which entitled the contractor plaintiff to seek refund of half of the security deposit.

4. Even according to the trial Court, clause : 3(a) of Contract, Ex.45, entitled the Director, Purchase and Property on behalf of the defendant - University to exercise discretion in forfeiting the lesser amount than the amount actually deposited by the Contractor as security. If the contract Agreement Ex.45 authorised the defendant University under clause : 3(a) to forfeit the security in case of breach of contract the trial Court, to my mind, was hardly justified in holding that the ends of justice would be met if the defendant University is directed to refund a sum of Rs.3852/- out of the total deposit. This discretion was exercised by the trial Court on the pretext of meeting the ends of justice, but I believe that ends of justice have not been met by this observation rather the ends of justice have been frustrated once the trial Court itself observed that the defendant University who is appellant, was entitled to forfeit the earnest money or security in case the contract was not completed in accordance with the order.

Thus, on facts the findings recorded by the trial Court are found perverse and patently illegal.

5. So far as legal aspect is concerned the trial Court has taken shelter behind Section 74 of the Indian Contract Act. This section hardly applies to the facts of the case. The defendant University never complained or claimed or filed Suit for recovery of damages for breach of contract. Consequently this section was unnecessarily quoted by the trial Court and on the strength of this section in the Contract Act the Judgment and Decree of the trial Court cannot be sustained.

6. In view of above discussion the Judgment and Decree of the trial court are illegal hence the same cannot be maintained. The Appeal, therefore, succeeds and is allowed. The Judgment and Decree of the trial Court dated 31.7.1979 are hereby set aside. No order as to costs.

sd/-

Date : April 06, 2000 ( D. C. Srivastava, J. )

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